Ontario

fact sheet
employment standards act

VACATION

What is the purpose of the *Employment Standards Act, 2000 (ESA)*?

The *ESA* sets out rights of employees and requirements that apply to employers in most Ontario workplaces.

What work is not covered by the *ESA*?

Most employees and employers in Ontario are covered by the *ESA*. However, the *ESA* does ***not*** apply to certain individuals and persons or organizations for whom they work, including:

- Employees in sectors that fall under federal jurisdiction, such as airlines, banks, the federal civil service, post offices, radio and television stations and inter-provincial railways
- Individuals performing work in a program approved by a college of applied arts and technology or university
- A secondary school student who performs work in a work experience program authorized by the school board that operates the school in which the student is enrolled
- People who do community participation under the *Ontario Works Act, 1997*
- Police officers (except for the Lie Detectors part of the *ESA*, which *does* apply)
- Inmates taking part in work or rehabilitation programs, or young offenders who perform work as part of a sentence or order of a court
- People who hold political, judicial, religious or elected trade union offices.

Employees of the Crown are excluded from some (but not all) provisions of the *ESA*.

For a complete listing of other job categories not governed by the *ESA*, please check the *ESA* and its regulations. Regulations set out exemptions to the law, special rules and details about how to apply certain sections of the *ESA*.

QUALIFYING FOR A VACATION WITH PAY

Understanding how vacation is earned: key definitions

Vacation entitlement year
Most employees covered by the *ESA* earn two weeks of vacation with pay after each 12 months of employment. This 12-month period is called the "vacation entitlement year".

***Standard* vacation entitlement year**
This starts the day an employee is hired and lasts 12 months. After this entitlement year ends a new entitlement year begins. This happens every 12 months as long as the employee works for the employer.

***Alternative* vacation entitlement year**
An employer might have an entitlement year that doesn't start on the date an employee is hired. For example, an employee might be hired on June 1, but the employer has set up the entitlement year to begin each year on September 1.

Stub period
This is the period between the date of hire and the beginning of the first alternative vacation entitlement year, or the period between the end of the last standard vacation entitlement year and the start of the first alternative vacation entitlement year where the employer switches from a standard vacation entitlement year to an alternative vacation entitlement year. In the example above the stub period would be the period from June 1 to August 31. Employees earn a pro-rated amount of vacation time during a stub period.

Who is entitled to a vacation with pay?

Most employees covered by the *ESA* are eligible for a minimum of two weeks of vacation with pay after each 12 months of employment. This is known as a "vacation entitlement year". There are two kinds of vacation entitlement years:

1. The "standard vacation entitlement year" is a recurring 12-month period that starts on the day the employee is hired.

2. An "alternative vacation entitlement year" can be set up by an employer to begin on a date chosen by the employer other than the employee's date of hire. This is also a recurring 12-month period.

If the employer uses an alternative vacation entitlement year, the employee is also entitled to a pro-rated amount of vacation with pay for the period ("stub period") before the alternative vacation entitlement year begins.

Full-time, part-time, temporary, seasonal, contract workers and student workers are eligible. However, there are job-specific exemptions to the vacation with pay part of the *ESA* that mean

certain workers are not eligible. Please refer to the chart in the "How are You Covered by the *ESA*?" Fact Sheet for details about job-specific exemptions to the vacation with pay rules.

What is vacation with pay?

This employment standard has two parts: vacation **time** and vacation **pay**.

Employees are entitled to two weeks of **vacation time** after each 12-month vacation entitlement year. Where the employer has established an alternative vacation entitlement year that does not start on the anniversary date of the employee's hire, the employee is entitled to a pro-rated amount of vacation time for the period (stub period) before the alternative vacation entitlement year starts.

Vacation pay must be at least four per cent of the "gross" wages earned in the 12-month vacation entitlement year or in the stub period (where that applies). (See *Gross wages: what's included and what's not?* on page 9.)

Note: If an employee's contract or collective agreement provides a better vacation benefit than the minimum required, the employee may be entitled to a higher percentage of his or her gross earnings for vacation pay. For example, an employee might be entitled to three weeks' vacation per year, with six per cent of gross earnings for vacation pay.

What if an employee is away from work during the year?

The vacation entitlement year and stub period (if any) that qualify an employee for vacation time include active and inactive employment. For example, the right to vacation time is earned even when an employee spends time away from work because of:

- layoff
- sickness or injury
- approved leaves under a contract of employment or collective agreement
- pregnancy, parental, family medical and emergency leaves.

What if an employee is not employed for the employer for a full year?

An employee who doesn't complete either the stub period (if any) or the full vacation entitlement year doesn't qualify for vacation time. However, employees earn vacation pay as they earn wages. So if an employee paid by the hour works one hour, he or she is entitled to at least four per cent of the hour's wages as vacation pay.

Employees may also have contracts or collective agreements that provide better vacation benefits than the minimum required under the *ESA*, and so they may be eligible for vacation time even though they haven't completed a stub period or vacation entitlement year.

See *What if employment ends before an employee has taken vacation?* for more details on employee vacation pay entitlements.

EMPLOYEE ENTITLEMENTS: VACATION TIME

How much vacation time are employees entitled to?

The minimum vacation time under the *ESA* is two weeks after every 12-month "vacation entitlement year".

In many cases, an employee's "vacation entitlement year" will coincide with the date he or she was hired. That is, his or her first "vacation entitlement year" will start the date the employee was hired, and end 12 months later. The second "vacation entitlement year" will start 12 months after the date the employee was hired, and end 12 months later, and so on. This is called a "*standard* vacation entitlement year".

In other cases, the employer will have set up a vacation entitlement year that will start on a date that is different from the date the employee was hired.

For example, an employee is hired on August 15, 2003 and the employer establishes a vacation entitlement year of January 1, 2004 to December 31, 2004. This is called an "*alternative* vacation entitlement year". In these cases, the employee will be entitled to at least two weeks of vacation with pay after the end of the alternative vacation entitlement year, but will also be entitled to a pro-rated amount of vacation with pay for the period (called the "stub period") before the 12-month alternative vacation entitlement year begins. For example, the employee hired on August 15, 2003 will earn a pro-rated amount of vacation for the "stub period" of August 15, 2003 to December 31, 2003.

For employees who have a regular work week, the entitlement for the stub period is calculated as two weeks multiplied by the ratio of the length of the stub period to 12 months. For employees who do not have a regular work week, the entitlement for the stub period is calculated as two times the average number of days worked per work week in the stub period multiplied by the ratio of the length of the stub period to 12 months.

Vacation time calculation for a stub period: no regular work week

Sarah was hired on February 4 and her employer has established a vacation entitlement year that begins on April 1 of each year. The number of days she works each week varies. What vacation does Sarah earn in the stub period between February 4 and March 31?

1. The formula for calculating this entitlement is two times the average number of days worked per work week in the stub period, multiplied by the ratio of the stub period to 12 months.

2. To calculate the average number of days worked per work week, count the total number of days that Sarah worked in the stub period, that is, between February 4 and March 31 *inclusive*, and divide it by the number of work weeks in the stub period. In this example, assume Sarah worked **18 days** in the stub period and that there were 8 work weeks between February 4 and March 31, inclusive. So, 18 divided by 8 = **2.25 days.**

3. Then calculate the ratio of the stub period to 12 months. This can be done by comparing the number of days, weeks or months in the stub period to the number of days, weeks (or months) in a 12-month period. In this example, there are 8 weeks in the stub period and 52.18 weeks in a 12-month period. The ratio is calculated as 8 divided by 52.18 = **0.15**

4. To determine Sarah's vacation entitlement for the stub period, apply the formula: two times the average number of days worked per work week multiplied by the ratio of the stub period to 12 months. So, 2 x 2.25 x .15 = **0.68 days**.

Sarah's vacation time entitlement for the stub period is 0.68 days.

Who decides when an employee may take his or her vacation with pay?

The employer decides when vacation time will be taken, provided that the employee receives his or her vacation time and pay no later than ten months after the end of the vacation entitlement year or the stub period (if any).

A typical case: Bryce was hired on February 24, 2003. His employer established an alternative vacation entitlement year of July 1 to June 30. The pro-rated amount of vacation time that Bryce earned for the stub period of February 24, 2003 to June 30, 2003 must be taken within 10 months of the end of the stub period (that is, within 10 months of June 30, 2003). The vacation time Bryce earns for the vacation entitlement year of July 1, 2003 to June 30, 2004 will have to be taken within 10 months of the end of the vacation entitlement year (that is, within 10 months of June 30, 2004).

If the deadline under the *ESA* for taking a vacation comes up when an employee is on pregnancy, parental family medical or emergency leave, the vacation must be taken when the leave ends or at a later date with the agreement (in writing) of the employer and employee.

In addition, if an employee who is on a pregnancy, parental family medical or emergency leave would otherwise have to give up some or all of his or her vacation entitlements under his or her contract of employment, the employee may defer taking the vacation until the leave expires or take it at a later date with the agreement (in writing) of the employer and employee.

Vacation pay must be paid either before the vacation commences, or if the employee is paid by direct deposit or is not taking vacation in complete weeks, on or before the pay day for the period in which the vacation falls (**unless the employee agrees in writing to payment at some other time**).

An employee can give up his or her vacation time only with the employer's written agreement and the approval of the Director of Employment Standards. This approval does not affect an employer's obligation to pay the employee vacation pay: employees may give up vacation time, but not the right to vacation pay.

How much vacation time may an employee take at once?

<u>Vacation Time Earned During Vacation Entitlement Years</u>

Employers are required to schedule vacation time earned in the vacation entitlement year in a block of two weeks or in two one-week blocks unless the employee makes a written request, and the employer agrees in writing, to schedule the vacation in shorter periods.

<u>Vacation Time Earned During Stub Periods</u>

If the amount of vacation time earned during the stub period is between two and five days, the vacation days must be taken in a row, unless the employee requests in writing and the employer agrees in writing to shorter periods.

If the amount of vacation time earned during the stub period is more than five days, the first five days must be taken in a row and any additional days may be taken together with the first five or in a separate period of days in a row. However, the employee may request in writing and the employer may then agree in writing to shorter periods.

What if an employee wants to take his or her vacation in periods of less than a week?

The employee must ask the employer in writing, and the employer must agree in writing, for vacation time earned in each vacation entitlement year or stub period to be taken in shorter periods than those set out above.

The number of single vacation days the employee is entitled to is determined in one of two ways:

1) For a vacation entitlement year:

- The employer takes the number of days in an employee's usual work week and multiplies this number by two.

or

- If the employee doesn't have a usual work week, the employer calculates the average number of days the employee worked each week in the most recently completed vacation entitlement year. This number is then multiplied by two.

No regular work week: a typical case

Chantale's employer has agreed in writing to her written request to take the vacation time she earned in her last vacation entitlement year in periods of less than one week. The number of days she works each week varies.

1. First, count the total number of days that Chantale worked in the last vacation entitlement year. To do this, add up the total number of days Chantale worked that year. In this example, assume that Chantale worked **149 days**.

2. Second, divide the number of days worked by 52.18 (the number of weeks in a year) to determine the average number of days worked per week. So, 149 divided by 52.18 = **2.86 days**.

3. Third, calculate the vacation time entitlement by multiplying the average days worked per week (the number obtained in step 2) by two. Chantale's vacation entitlement is 2.86 x 2 = **5.72 days**.

   Result: Chantale is entitled to 5.72 days of vacation.

2) For a stub period:

- The employer takes the number of days in an employee's usual work week and multiplies that by the ratio of the length of the stub period to 12 months. This number is then multiplied by two.

or

- If the employee doesn't have a usual work week, the employer calculates the average number of days worked per work week in the stub period and multiplies it by the ratio of the length of the stub period to 12 months. This number is then multiplied by two. *See the example of this calculation on page 5.*

EMPLOYEE ENTITLEMENTS: VACATION PAY

What pay are employees entitled to when on vacation?

Employees must receive a minimum of four per cent of the "gross" wages (excluding vacation pay) they earned in the vacation entitlement year or stub period for which the vacation is being given. (see *Gross wages: what's included and what's not?*)

A typical case: Janice earns gross wages of $16,000 in a 12-month vacation entitlement year. When she takes her two weeks of vacation, she is entitled to at least four per cent of $16,000, or $640, as vacation pay.

If an employee's contract or collective agreement provides a better vacation benefit than the minimum required, the employee may be entitled to a higher percentage of his or her gross earnings for vacation pay. For example, Janice's contract might give her three weeks' vacation per year, with six per cent of gross earnings for vacation pay. In that case her vacation pay would be six percent of $16,000, or $960.

What if employment ends before an employee has taken vacation?

An employee might quit or have his or her employment terminated before receiving all of the vacation pay he or she has earned. In that case, the employer must pay the vacation pay owing to the employee (at least four per cent of gross wages earned in each vacation entitlement year and/or stub period, less any of that vacation pay already paid – see *Gross wages: what's included and what's not?*). This amount must be paid no later than seven days after employment ended, or on what would have been the employee's next pay day, whichever is later.

Because vacation pay is earned as a percentage of wages, an employee who has earned any wages will have some vacation pay entitlement. For example, if an employee paid by the hour works just one hour, he or she will be entitled to at least four per cent of the hour's wages as vacation pay.

What if an employee chooses not to take vacation?

An employee may give up any of the vacation time he or she has earned only if the employee and employer agree (in writing) and the Director of Employment Standards approves the agreement. However, the employer is still obligated to pay the employee any vacation pay earned with respect to that vacation.

Gross wages: what's included and what's not?

For the purposes* of calculating vacation pay, gross wages include:

- regular earned wages, as well as commissions
- bonuses and gifts that are non-discretionary or are related to hours of work, production or efficiency
- allowances for room and board
- overtime pay
- public holiday pay
- termination pay

They do not include:

- tips and gratuities
- discretionary bonuses and gifts that **are not** related to hours of work, production or efficiency (such as a Christmas bonus unrelated to performance)
- expenses and travelling allowances
- contributions made by an employer to a benefit plan and payments from a benefit plan that an employee is entitled to

***Note**: Although vacation pay is defined as "wages" under the Act, vacation pay that has been paid out or has been earned but not paid is *not* included in the amount of "gross wages" on which vacation pay is calculated.

In addition, although severance pay is defined as "wages" under the Act, severance pay is *not* included in the amount of "gross wages" on which vacation pay is calculated.

When should an employee receive his or her vacation pay?

An employee must receive his or her vacation pay in a lump sum before taking a vacation. There are four exceptions to this requirement:

1. If the employer pays the employee his or her wages by direct deposit into an employee's account at a financial institution, the vacation pay may be paid on or before the pay day for the pay period in which the vacation falls.

   An example: John is taking vacation from September 9-16. His normal pay day that covers this period is September 21. John must be given his vacation pay, on or before September 21.

2. When the vacation time is being taken in periods of less than one week, the vacation pay may be paid on or before the pay day for the period in which the vacation falls.

   A typical case: Alvaro is taking vacation from January 2 to January 4, and the normal pay day that covers this period is January 30. Alvaro must be given his vacation pay on or before January 30.

3. When the employee has agreed in writing that his or her vacation pay will be paid on each paycheque as it is earned, the vacation pay earned in each pay period may be paid on the pay day for that pay period.

4. If the employee agrees in writing, the employer can pay the vacation pay at any time agreed to by the employee.

What records must the employer keep and how do I get information about my vacation time and pay?

Employers are required to keep records of the **vacation time** earned since the date of hire but not taken before the start of the vacation entitlement year, the vacation time earned and vacation time taken (if any) during the vacation entitlement year (or stub period), and the balance of vacation time remaining at the end of the vacation entitlement year (or stub period).

The employer must also keep records of the **vacation pay** paid to the employee during the vacation entitlement year (and stub period, if any) and how that vacation pay was calculated. These records must be made no later than seven days after the start of the next vacation entitlement year (or first vacation entitlement year if the records relate to a stub period) or the first pay day after the stub period or vacation entitlement year ends, whichever is later.

Employees may request (in writing) a statement containing the information in the employer's vacation records. The employer is required to provide the information no later than:

- seven days after the request, or
- the first pay day after the employee makes the request,

whichever is later, but subject to the following:

If the employee asks for information concerning the current vacation entitlement year or stub period, the employer is required to provide the information no later than:

- seven days after the start of the next vacation entitlement year (or first vacation entitlement year in the case of a stub period), or
- the first pay day after the stub period or vacation entitlement year ends,

whichever is later.

The employer is required to provide the information with respect to each vacation entitlement year or stub period only once.

If the employee has agreed that vacation pay will be paid on each paycheque as it is earned, the employer does not need to keep records and provide statements about **vacation pay** as discussed above. Instead, the employer must report the vacation pay that is being paid separately from the amount of other wages on each wage statement, or provide a separate statement setting out the vacation pay that is being paid. The employer must also keep a record of that information.

Must employers provide vacation pay when there's a labour dispute?

If an employee has scheduled vacation time, then goes on strike or is locked out during that time, the employer must still provide vacation pay for the scheduled vacation time.

Do public holidays affect vacations and vacation pay?

A public holiday could fall during an employee's vacation. If the employee qualifies for a public holiday, he or she doesn't lose the right to the paid public holiday, and the day remains a vacation day for the employee.

In this case, the employee is entitled to one of the following:

- a substitute day off work with public holiday pay, taken within three months of the public holiday or, if the employee agrees in writing, within 12 months of the public holiday

  or

- if the employee agrees in writing, the employer can pay public holiday pay for the public holiday without giving the employee a substitute day off work.

Employees may agree in writing to work on a public holiday that falls while they are on vacation. For more details, refer to the *ESA* Fact Sheet on Public Holidays.

What if the employer does not follow the *ESA*?

If an employee thinks the employer is not complying with the *ESA*, he or she can call or visit the nearest Ministry of Labour office to discuss a particular situation or to file a complaint. Complaints are investigated by an employment standards officer who can, if necessary, make orders against an employer—including an order to comply with the *ESA*.

This Fact Sheet provides general information about vacation with pay as set out in the *Employment Standards Act, 2000 (ESA)* and its regulations. For complete information please refer to the *ESA* and the regulations.

Need More Information?

If you have questions about the *Employment Standards Act*, call the Ontario Ministry of Labour's Employment Standards Information Centre at 416-326-7160 or 1-800-531-5551, or visit a Ministry of Labour office or Government Information Centre in person.

Here's how you can get written publications about the *Employment Standards Act:*

- Ministry of Labour website: www.gov.on.ca/lab
- Ministry of Labour Publications Sales unit: 1-800-809-4731

***ESA* Fact Sheets are available on the following subjects:**

- ☐ Agricultural Workers
- ☐ Domestic Workers
- ☐ Emergency Leave
- ☐ Family Medical Leave
- ☐ Frequently Asked Questions
- ☐ Homeworkers
- ☐ Hours of Work & Overtime
- ☐ How Are You Covered by the *ESA*?
- ☐ How to File a Claim
- ☐ Minimum Wage
- ☐ Pregnancy Leave & Parental Leave
- ☐ Public Holidays
- ☐ Retail Workers
- ☐ Role of the Ministry of Labour
- ☐ Termination of Employment & Severance Pay
- ☐ Vacation
- ☐ What Young Workers Should Know

This Fact Sheet is provided for your information and convenience only. It is not a legal document. For further information and the exact wording in the ESA, please refer to the Employment Standards Act, 2000 (*ESA*) *and regulations.*

Please call the Employment Standards Information Centre in the greater Toronto area at 416-326-7160, or toll-free outside Toronto at 1-800-531-5551.

Information on the *ESA* can also be found at the *Employment Standards Act* section of the Ministry of Labour's website: www.gov.on.ca/lab. You can order copies of the *ESA* and related information materials from:

- the Ministry of Labour's Publication Sales Unit at 1-800-809-4731;
- the Ontario government E-Laws website at www.e-laws.gov.on.ca or,
- Publications Ontario, 1-800-668-9938; hearing impaired TTY 1-800-268-7095.

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